

GENERAL ANDREW JACKSON.

[To accompany bill H. R. No. 503.]

JUNE 17, 1842.

Mr. C. J. INGERSOLL, from the Committee on the Judiciary, submitted the following

REPORT:

The undersigned members of the Committee on the Judiciary, to whom are referred several memorials, urging the remission of the fine on General Jackson, imposed while he commanded at New Orleans, would have reported before now, but that the Senate, having moved first on a bill for the same purpose, it was deemed proper to await their final disposition of the subject.

It is not the attempt of this brief report to particularize the circumstances of that infliction, amid events which closed war and introduced peace, by triumphs of inestimable value to the country. Technical proofs or particulars of those events which are of universal knowledge would not consist with that faith which entertains perfect confidence, from traditionary and historical evidence alone, that Warren fell at Bunker Hill, Cornwallis surrendered at Yorktown, and Jackson was sentenced to pay a fine for suspending the faculties of a judge, while commanding the American troops at New Orleans.

The record of the judgment fining General Jackson having mysteriously disappeared, the best if not the only irrefutable proof of this transaction is no longer attainable; and we are thrown on other evidence.

Unanimous acclaim of the American nation gives Jackson to history as a victor entitled to all that a grateful country can bestow. Yet, considerate Americans are anxious, as he must be, that no martial triumph or command shall impair the supremacy of law, which, more than the most brilliant exploit of arms, is the great shield of American republican institutions, happiness, and character.

Sustaining both these elements of patriotic attachment, an act of Congress may relieve General Jackson from the fine in question; not as an individual, but as a great public servant, whose conduct is parcel of the history, as it ought to be of the glory and the well being of this republic. He does not petition for relief. The memorials before us come from generous citizens, who, if not militating with judicial authority, desire to remove from a victory they delight in, what alone tarnishes one of the brightest of American achievements, is one of the strongest bonds of nationality, a safeguard of this Union, and a rudiment of American annals, inspiring ennobling admiration of martial heroism, without diminishing that inextinguishable love of law and order which is the first lesson of good government.

To appreciate General Jackson's predicament when commanding at New Orleans, a glance is due to his responsibilities, which, perhaps, have not been enough attended to.

The day before peace was signed at Ghent, between the United States and Great Britain, it became his military duty to attack an invading enemy, leading formidable forces to the capture of New Orleans. The bold check of that timely onset premised a great victory some days afterwards, when a veteran, confident, and powerful army was driven from anticipated conquest, with disparity of force and of loss such as warfare seldom chronicles.

With all the perennial popular exultation constantly commemorating that victory, it has hardly yet been valued as it ought to be. They only duly appreciate General Jackson's success who well consider the consequences of his defeat and the capture of New Orleans. The losses, sufferings, bloodshed, outrage, and ignominy of its sack, are nothing compared with more disastrous consequences which his shining success has cast into the shade of oversight.

American title to the magnificent regions of Louisiana, the parent of many States, the granary of these United States for their richest productions, the great Southern reliance for Northern navigation, manufactures, population, and enterprise—the title to these regions derived through the mere ruler of France, as Great Britain uniformly called our grantor of Louisiana, was not acknowledged as unquestionable. At the period of the negotiations of Ghent, Napoleon was not only vanquished and taken prisoner by our exasperated enemies, but his whole empire was treated by them as a mere tissue of usurpation, fraud, and wrong. In close alliance with the whole of all conquering Europe, Great Britain, during the negotiations at Ghent, despatched veteran armies and navies to the conquest of Louisiana. The battles which frustrated that conquest were fought after the treaty of peace. Tidings of that peace, and of the victory at New Orleans, reached Washington together. If those tidings had been, that the metropolis of Louisiana, the key to the Southwest, had fallen by right of conquest into British possession, would peace have restored the American ownership of such a prize? Was its immense invasion to be a mere pursuit of barren triumphs, bloody battles, and insalubrious campaigns, for the poor purpose of surrendering to the United States a Spanish colony which it might be said they had surreptitiously got from the ruler of the French? Might not Louisiana be held after the peace of Ghent, as never having been rightfully an American possession? Impreguably entrenched at New Orleans, with indisputable command of all the Southern rivers, bays, lakes, and estuaries, open communication to the sea, and all Christendom combined in forcing restoration of the alleged spoils of French misrule, how shall we estimate Jackson's victories on those fields, if they crushed a design from the captured capital of Louisiana to repudiate its American ownership—to insist that neither the meaning nor the language of the treaty of Ghent required Great Britain to *restore* to the United States what was never theirs, but in justice and by right belonged to Spain?

Distracted as the United States were by faction, denying the justice, proclaiming the wickedness and madness of the war, said to be waged at Bonaparte's dictation; impoverished as the country had become by its wasting exigencies; the Union, in fact, reduced to dependence on the States for waging it, the treaty of Ghent would have presented a distressing alterna-

tive, if tendering peace without the restoration of Louisiana, or war renewed under every political, moral, and physical disadvantage, by years of ruinous efforts to reconquer that territory.

From such dire alternative were we saved, perhaps, by the victory of New Orleans, crushing at a blow all perfidious plans and prevarications, and crowning the peace of Ghent by American inauguration, which silenced foreign enemies every where, and inspired every American with cordial and invincible patriotism.

They who partook the perils and the passions of that crisis, (may it not be added that even we, who witness what the American Union suffers now, in Congress itself, from sectional and sinister estrangement?) may appreciate, but it is impossible to exaggerate, the value of Jackson's victories. It is not irreverent humbly to believe that he was the providential instrument, the man of the crisis, appointed to save a country of distant States, distinct races, various peoples, climes, complexions, and attachments, from dismemberment and overthrow, and to bind to the rest by the enthusiasm of common dangers, common triumphs, and a common renown, the new-born citizens of now a large portion of this Union, then hardly reciprocating sympathies with the other States.

Such, it is submitted, is the estimate which history will put on Jackson's military titles to the gratitude of the American nation. Such will be the verdict of posterity. His subsequent civil magistracy, as yet, eclipses his military name, by the intervention of transient passions. But centuries hence, unless the instinctive and inveterate preference of mankind for war-like pre-eminence be eradicated from the human bosom, Jackson will be the hero of this century, like Washington of the last, long after the statesmen, the scholars, the poets, and philosophers of his time, pass into oblivion.

If this view of the subject be correct, it is a great national illustration we are dealing with, which it ought to be the desire of all who love their country to transmit untarnished to futurity, if it can be done with truth and justice.

Let us, then, in the next place, descending from national considerations to individual actions, endeavor to ascertain whether the offence for which the fine was imposed on Gen. Jackson is so heinous and unpardonable, that contemporary legislation cannot blot it from his fame without injustice.

Stranger to the heterogeneous population he was sent to New Orleans to command, to unite, to embody, to marshal, to animate, to fanaticise, or fail in his mission; ignorant of their many tongues, unused to their luxurious habits, hardly tolerant of their worship, so different from that to which he was devoutly attached, with a few half-armed volunteers from far distant homes, and a handful of recruits, his task was to organize victory from the raw materials of the untutored courage of Tennessee, Kentucky, and Mississippi, the indolent ardor of Louisiana, untrained city shop-keepers, lawyers, and laborers, French and Spanish creoles, European Frenchmen and Spaniards, sailors, negroes, pirates, and this motley amalgamation under the influences of a licentious press, and, as he believed, disaffection in the constituted authorities of the State. His physical were as bad as his political and moral difficulties. Without sufficient supplies of arms and ammunition, it is a well-known fact that among his reasons for inviting the pirate chief of Barrataria to share his romantic exploits, was the necessity of borrowing Lafitte's pistol flints to put in the guns of Jackson's soldiers.

Throughout all the hardships, tribulations, and vicissitudes of the dictatorship, he had no option but to assume or surrender at discretion over such a mass—we hear of no departure from the equanimity and forbearance which characterized his deportment, but the single transaction, for which the fine was imposed on him. The general rule of his conduct appears to have been free from every act of violence, and this is the only exception charged. Suffering with a severe disease, and tried by innumerable annoyances, the persons, the prejudices, the property, the dwellings, the wishes, of the motley population, were always respected. Enemies bore grateful testimony to his never-failing humanity. Prudence distinguished his generalship still more than courage. Flushed with prodigious triumph, he would not risk the lives of his citizen soldiers to pursue routed assailants, whose complete discomfiture, and perhaps capture, at great cost of bloodshed, might have more than ever signalized his prowess. Instead of that, he repaired to the cathedral, to humble himself in pious gratitude to his Creator, for an almost bloodless triumph.

Such a course of conduct is hardly consistent with disregard of judicial authority. Martial law was indispensable. Enjoying the benignant supremacy of the due course of law, we look with wise abhorrence on that suppression of it which hostilities sometimes render unavoidable. Americans venerate the law as their greatest secular reliance, which acts of Congress least of all should impair. Still, emergencies occur when it must give way to that law martial which has been defined to be the absence of all law. War itself is the necessary interruption of law. A people's safety is supreme law; and, as war is justly undertaken for the sake of peace, so republican freemen must be taught that it becomes sometimes unavoidable to institute martial law, in order to save all other laws from destruction. Without the vexatious and cruel exactions of martial law, the American Revolution would have proved an utter failure. If Washington, Gates, and Greene, had been fined for every severity they inflicted by martial law, the victories of Saratoga, Yorktown, and the Cowpens, would have been won in vain, or not at all. The independence of these United States, begun in commotion, was effected by general and habitual martial law, exercised in its most odious inflictions. It is impossible, with any justice, to condemn or censure General Jackson for the enforcement of martial law. And as he was the best, if not the sole judge of its necessity, so was he responsible for its endurance to the end of the campaign. He was bound to maintain it till the solemn acknowledgment of peace established beyond all doubt the safety of the regions and people intrusted to his care.

Reason cannot, history will not, indulge in *ex post facto* speculations, whether peace, signed at Ghent and proclaimed here, was a probable event there at any moment before it was officially made known to the commander, by authentic and unquestionable information. Till then, he was answerable on more than life—all his glories were staked—for the safety of New Orleans from hostile seizure, by stratagem, disaffection, treason, sedition, supineness, as much as force. The very rumors of peace might have been the best contrivances for disarming him. Several of the most brilliant exploits of that war were performed, both by sea and land, some time after the peace. Infamy would forever have shrouded the brave men who won these victories, if, by remissness or any relaxation of the severest military discipline, they had suffered defeat or surprise.

Argument, however, on this point is superfluous. We are taught by

the enemy what the fact and the right were. Some time after the judge's removal, General Jackson sent a messenger to the British commander, to acquaint him with a report of peace, and propose suspension of hostilities; which the British commander declined, because he had no account of peace; and when finally informed of its official intelligence, it was by a letter from General Jackson, who was therefore unquestionably bound to maintain all the positions of war for some time after his controversy with the judge.

If there were any reality in the design ascribed, as before mentioned, to the vast expedition against New Orleans, every instinct of Jackson's profound sagacity would arm him against the slightest departure from the strictest restraints of war, till beyond all doubt assured of the existence of peace. Under this impression, which none can now gainsay without imputing to him an insubordinate temper, contrary to the whole tenor of his career at New Orleans, and the British refusal of truce, he suspended the faculties, removed from the scene of action, and, perhaps, for a short time, put into confinement, but without personal rigor or disgrace, a judge, who, by writ of *habeas corpus*, took from the general's military possession a turbulent disturber of his discipline, defying his authority in the public press.

As it is not the aim of this report to vindicate the general at the expense of the judge, but, on the contrary, we will not meddle with the controversy which has been, as we conceive, unwisely raised between military and civil power, further than may be necessary to show that the general is entitled to relief without disparaging the judge. If disposed to quarrel with the fine imposed, it would be easy to dwell on the universal odium fallen upon all summary judicial punishment for constructive contempt. The codes of all the States, and of the United States, teem with the recoil of legislation against that judicial extravagance, as repugnant to American feelings as martial law itself.

But we will not place the general and the judge in conflict. We may grant that the judge did what he deemed his duty, and that that duty was laudably performed. We do not recommend an act of Congress to cast any shade on the judicial character or impair in any degree the unhindered administration of justice. General Jackson's victory over himself, when he submitted, without a murmur, to the infliction of the fine, vindicated the law, and was ample atonement for whatever offence can be imputed. With magnanimous and exemplary submission, he paid the penalty, without resistance, assistance, murmur, or dispute, refusing the proffered contributions of his countrywomen for its acquittance. With all the powers of martial law and intoxicating popularity, he bowed before the seat of justice, and, in so doing, according to judicial precedents, the reason and philosophy of punishment, is at least pardonable, if guilty. Some may applaud, all should forgive, under such circumstances. Never, in the sternest trials of Roman civic virtue, was military power more sublimely subjected to supremacy of law; never did it receive more memorable or exemplary homage, than when the armed commander, surrounded by his devoted troops, at a court crowded by excited populace, eager for violent reversal of a sentence, straining to the uttermost the judicial authority; when the general, thus environed, entreated the people to respect the judge, and submit in silence, as he did.

Not long before General Jackson repaired to New Orleans, liability for

another's debt deprived him of his homestead and the most valuable part of his plantation, which he converted into cash rather than be a debtor; and his home was actually a log cabin, hastily put up on the uncultivated part of his estate, at the time he thus refused to be relieved from the payment of an inconvenient fine.

The most fastidious maintenance of the law's supremacy should be satisfied by implicit obedience, in silence, under such circumstances. Is there any thing to endanger the administration of law in a legislative enactment to refund a fine thus imposed and paid? Remissions of fines imply no disparagement of tribunals imposing them. Every pardon granted by any of the thirty Executives of this country annuls a judicial sentence. If pardons impair the force of law, executive clemency is in perpetual conflict with judicial sanction. The President pardons offences, remits fines, mitigates sentences of courts of justice, criminal, civil, military, and naval, without hinderance or impeachment of the due course of law; and, though Congress does not so often grant such boons, yet the precedents are numerous and persuasive of their allowance. A large part of the laws of the United States make provision for not merely pardoning, but paying the debts of public officers, condemned in courts of justice, for illegal performance of official acts, who are thus relieved from pecuniary damages.

If the judge were now living, when nearly thirty years have mellowed the passions of those trying days, the committee trust that he would recommend that the fine should be remitted, the money refunded from the public Treasury, and General Jackson's military reputation consigned without blemish to posterity. As the judge is no longer here, for this act of grace, is it not due to his memory to presume his personal and judicial consent? It is far from derogatory to his dignity to transmit his name in honor with that of one of the most illustrious of his countrymen to the latest generations. In the act of grace and amnesty proposed, we anxiously disown the gratuitous and unwise controversy attempted to be raised between judicial and military authority. It is the part of wise legislation to maintain both, each in its proper place. We disclaim disparagement of the judge as well as of the law, in an act to relieve the general. But a provision in the act against detraction from the one needlessly insults the other, and destroys an act of amnesty due to the American people, as petitioned for by many of them and by the constituted authorities of several States—due to justice and to republican gratitude.

We think proper to add that this report has been composed from historical materials, without communication with the time-honored object of it, considering him as a national military monument, to be placed unsullied as such before mankind.

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